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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
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10/801,240

03/15/2004

Aaron M. Lamstein

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08/25/2009

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500 Sansome Street, Suite 404
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EXAMINER

VALENTI, ANDREA M

ART UNIT

PAPER NUMBER

3643

MAIL DATE

DELIVERY MODE

08/25/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte AARON M. LAMSTEIN

Appeal 2009-002182
Application 10/801,240
Technology Center 3600

Mailed: August 25, 2009

Before DALE M. SHAW, *Chief Appeals Administrator*.

ORDER DISMISSING APPEAL

On April 15, 2005, Appellant filed a Notice of Appeal. On September 13, 2007, an Examiner's Answer was filed which contained a new ground of rejection. According to the Manual of Patent Examining Procedure (MPEP) § 1207.03:

37 C.F.R. 41.39(b) provides that:

if an Examiner's answer contains a new ground of rejection, Appellant must within two months from the date of the Examiner's answer exercise one of the following two options to avoid *sua sponte* dismissal of the appeal as to the claims subject to the new ground of rejection:

(1) Reopen prosecution. Request that prosecution be reopened before the primary examiner by filing a reply under § 1.111 of this title with or without amendment or submission of affidavits (§§ 1.130, 1.131 or 1.132 of this title) or other evidence. Any amendment or submission of affidavits or other evidence must be relevant to the new ground of rejection. A request that complies with this paragraph will be entered and the application or the patent under *ex parte* reexamination will be reconsidered by the Examiner under the provisions of § 1.112 of this title. Any request that prosecution be reopened under this paragraph will be treated as a request to withdraw the appeal.

(2) Maintain appeal. Request that the appeal be maintained by filing a reply brief as set forth in § 41.41. Such a reply brief must address each new ground of rejection as set forth in § 41.37(c) (1) (vii) and should follow the other requirements of a brief as set forth in § 41.37(c). A reply brief may not be accompanied by any amendment, affidavit (§§ 1.130, 1.131 or 1.132 of this title) or other evidence. If a reply brief filed pursuant to this section is accompanied by any amendment, affidavit or other evidence, it shall be treated as a request that prosecution be reopened before the primary examiner under paragraph (b)(1) of this section.

A review of the application has revealed that the Appellant has not provided a response in the allotted time to the designated new ground of rejection set forth by the Examiner.

Accordingly, the appeal in this application is dismissed.

Appeal 2009-002182
Application 10/801,240

If there are any questions pertaining to this dismissal, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

DMS\Sc

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